

Presented to the Court by the foreman of the
Grand Jury in open Court, in the presence of
the Grand Jury and FILED in The U.S.
DISTRICT COURT at Seattle, Washington.

MARCH 1 2007
By BRUCE RIFKIN, Clerk
Deputy

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

ROBERT FERRELL,

Defendant.

CR07 0066 RSM
INDICTMENT



07-CR-00066-INDI

THE GRAND JURY CHARGES THAT:

COUNT 1
(CONSPIRACY)

A. INTRODUCTION

At all relevant times to this Information:

1. The Federal Aviation Administration ("FAA") was an agency of the United States of America. The FAA was responsible for the solicitation, award, and oversight of procurement contracts entered into by the FAA.

2. ROBERT FERRELL was employed by the FAA as a contracting officer. In this capacity ROBERT FERRELL was responsible for awarding and administering procurement contracts on behalf of the FAA. As a contracting officer, ROBERT FERRELL had access to contractor bid or proposal information and source selection information.

3. Vicki Lynn Olson ("Olson") was employed by the FAA as the manager of the Acquisition Management Branch in Renton, Washington. In this capacity Olson was responsible for supervising FAA contracting officers, including FERRELL, who had the

1 authority to award procurement contracts on behalf of the FAA. Olson also had access to
2 contractor bid or proposal information and source selection information.

3 4. On or about April 4, 2002, the FAA announced a solicitation for offers on a
4 contract to build a Foundation and Steel Supports for High Intensity Approach Lighting
5 System ("ALSF") at Seattle Tacoma International Airport, SeaTac, Washington. The initial
6 solicitation was called a Screening Information Request ("SIR"). The purpose of the SIR was
7 to seek competent and suitable sources for the construction of the ALSF. The SIR indicated
8 that the estimated contract price of the project was from "\$1,000,000 - \$5,000,000." The SIR
9 requested that prospective bidders submit technical and business proposals addressing the
10 following criteria: (1) Knowledge and Experience of Key Project Elements - Past
11 Performance; (2) Management Approach, Abilities, Resources; (3) Key Personnel
12 Qualifications; and (4) Financial Resources and Capability. Once these proposals were
13 submitted, the FAA would evaluate each proposal and make a selection of qualified offerors
14 based on the evaluation criteria in the SIR. Those companies which were deemed to have
15 submitted qualified proposals would then be given an opportunity to submit price and technical
16 proposals for the ALSF Contract.

17 5. On or about April 18, 2002, the FAA received responses to the SIR and then
18 determined that PCL Construction Services, Inc. ("PCL") and Donald B. Murphy
19 Contractors, Inc. ("DBM") were qualified to submit proposals for construction of the ALSF.

20 6. On or about May 2, 2002, the FAA requested that PCL and DBM each submit a
21 price proposal and a technical proposal for the ALSF Contract. The FAA Request for Offer
22 ("RFO"), a type of SIR, provided that the ALSF Contract would be awarded on the basis of
23 two criteria: technical and price. The FAA stated that the technical criterion was more
24 important than price in making the contract award. However, the FAA specified that "price
25 becomes increasingly more important as differences in Technical scores among offers
26 decrease."

27 7. On or about May 30, 2002, DBM and PCL submitted to the FAA technical and
28 price proposals for the ALSF Contract. DBM's price proposal to construct the ALSF was

1 \$4,297,500. PCL's price proposal was \$4,561,800, which was \$264,300 higher than DBM's
2 price proposal.

3 8. DBM's and PCL's respective technical proposals were evaluated by two FAA
4 engineers. On May 31, 2002, the engineers completed their evaluation and concluded that
5 there was no "significant technical difference" between the two proposals. As a result of this
6 finding, the FAA project engineer recommended to the FAA contracting officer that the ALSF
7 Contract be awarded "to the offeror with the lowest cost."

8 9. On June 5, 2002, the FAA contracting officer responsible for awarding the ALSF
9 Contract decided to solicit a best and final offer from DBM and PCL. The two companies
10 were given until June 10, 2002, to submit their best and final offers.

11 10. On June 5, 2002, DBM submitted a best and final offer to the FAA in which DBM
12 clarified that it could complete the ALSF Contract within the time period specified in the
13 contract. DBM did not change its initial price proposal of \$4,297,500.

14 11. On June 10, 2002, PCL submitted a best and final offer to the FAA in which PCL
15 decreased their price proposal by \$213,600 to a total price of \$4,348,200. DBM's price was
16 still the lower price by \$50,700

17 12. On or about June 10, 2002, the FAA contracting officer prepared a written
18 memorandum indicating that the contracting officer intended to award the ALSF Contract to
19 DBM because the DBM technical and price proposals provided the "best value" to the FAA.

20 13. At least by June 12, 2002, Olson and ROBERT FERRELL decided to remove the
21 FAA contracting officer from the ALSF contract and replace her with ROBERT FERRELL.

22 14. On or about June 12, 2002, ROBERT FERRELL told the FAA contracting officer
23 that she was being removed from ALSF Contract and that ROBERT FERRELL was replacing
24 her as the contracting officer.

25 15. On or about June 12, 2002, ROBERT FERRELL contacted PCL and requested
26 that PCL submit another price proposal. DBM was not given this same opportunity. On the
27 same day, PCL submitted a "revised" price proposal which reduced its price by \$55,000 to a
28 total price of \$4,293,200. This new price was \$4,300 lower than DBM's best and final offer

1 of June 5, 2002.

2 16. On or about June 14, 2002, ROBERT FERRELL awarded the ALSF Contract to
3 PCL at a price of \$4,293,200.

4 B. THE AGREEMENT

5 17. Beginning at a date unknown but believed to be at least May 2002 and continuing
6 until in or about August 2002, in the Western District of Washington and elsewhere,
7 ROBERT FERRELL, Vicki Lynn Olson and others known and unknown to the Grand Jury
8 did knowingly and willfully combine, conspire, and agree to commit the following offenses
9 against the United States, to wit:

10 a. to knowingly disclose and obtain source selection information prior to the
11 award of the ALSF Contract, in violation of Title 41, United States Code, Sections 423(a) and
12 423(e); and

13 b. to knowingly and willfully make statements and documents containing
14 materially false, fictitious and fraudulent statements and to knowingly and willfully conceal
15 and cover up material facts by trick, scheme and device in a matter within the jurisdiction of
16 the Federal Aviation Administration, an agency of the United States, in violation of Title 18,
17 United States Code, Section 1001.

18 C. THE PURPOSE OF THE CONSPIRACY

19 18. The plan and purpose of the conspiracy was for ROBERT FERRELL and Vicki
20 Lynn Olson to provide a competitive advantage to PCL in the award of the ALSF Contract by
21 disclosing confidential source selection information to PCL. It was also a plan and purpose of
22 the conspiracy for ROBERT FERRELL, Vicki Lynn Olson and others to make materially
23 false statements and documents and to conceal and cover up material facts to ensure that PCL
24 was awarded the ALSF Contract and to conceal the nature of the conspiracy.

25 D. THE MANNER AND MEANS OF THE CONSPIRACY

26 19. ROBERT FERRELL, Vicki Lynn Olson and their co-conspirators used the
27 following means, among others, to effect the object and purpose of the conspiracy:

28 a. It was a part of the conspiracy that Olson encouraged PCL to submit a

1 | proposal for the ALSF contract and then, in concert with ROBERT FERRELL, took steps to
2 | ensure that the competitive bidding process would be circumvented in order to ensure that the
3 | ALSF Contract would be awarded to PCL.

4 | b. It was a further part of the conspiracy that Olson made disparaging remarks
5 | about DBM and encouraged the FAA contracting officer and others to award the ALSF
6 | contract to PCL.

7 | c. It was a further part of the conspiracy that Olson attempted to prevent the
8 | original FAA contracting officer from awarding the ALSF contract to DBM by falsely stating
9 | that the contract could not be awarded because there were outstanding "real estate" issues
10 | which needed to be resolved before the ALSF Contract could be awarded.

11 | d. It was a further part of the conspiracy that ROBERT FERRELL and Olson
12 | decided to remove the FAA contracting officer from the ALSF Contract in order to prevent
13 | the contracting officer from awarding the ALSF Contract to DBM, and then replacing the
14 | contracting officer with ROBERT FERRELL who would ensure that the ALSF Contract was
15 | awarded to PCL.

16 | e. It was a further part of the conspiracy that ROBERT FERRELL and Olson
17 | provided PCL with confidential source selection information in order to ensure that PCL
18 | would be awarded the ALSF Contract. This included ROBERT FERRELL informing PCL
19 | that it was not the low bidder on the ALSF Contract and that PCL needed to lower its price
20 | proposal by \$55,000 in order to be awarded the ALSF Contract. Additionally, Olson
21 | disclosed to PCL the price differential between the DBM and PCL price proposals.

22 | f. It was a further part of the conspiracy that PCL was awarded the ALSF
23 | Contract based on the fact that PCL had been provided with confidential source selection
24 | information thereby receiving an unfair competitive advantage over DBM.

25 | g. It was a further part of the conspiracy that ROBERT FERRELL, Olson and
26 | their co-conspirators made materially false statements and documents and concealed material
27 | facts to ensure that PCL was awarded the ALSF Contract and to conceal the nature of the
28 | conspiracy and the true reason as to why the ALSF Contract had been awarded to PCL.

1 Those steps, included among other things, (1) falsely claiming that PCL's June 12, 2002
2 "revised price proposal" was based on the "late receipt of a subcontractor bid" when in fact
3 ROBERT FERRELL, Olson and their co-conspirators knew that PCL's "revised price
4 proposal" was based on the fact that PCL had been provided with source selection information
5 that had not been provided to DBM; (2) providing false information and concealing material
6 information from FAA attorneys which caused the attorneys to authorize ROBERT FERRELL
7 to accept the "revised price proposal" from PCL; and (3) falsely stating to DBM that "no
8 actions were taken to prevent" DBM from successfully bidding on the ALSF Contract and
9 from successfully protesting a wrongful award to PCL.

10 E. OVERT ACTS

11 20. In furtherance of the conspiracy and to accomplish the object of the conspiracy,
12 ROBERT FERRELL, Vicki Lynn Olson and their co-conspirators committed various overt
13 acts in the Western District of Washington, including but not limited to the following:

14 a. In or about April or May 2002, Olson encouraged PCL to submit a proposal
15 for the ALSF Contract.

16 b. On or about May 30, 2002, Olson either opened or caused others to open the
17 respective price proposals submitted by DBM and PCL and then reviewed the price proposals.

18 c. In or about June 2002, Olson encouraged the FAA contracting officer to
19 award the contract to PCL and to improperly credit PCL's proposal with a Value Engineering
20 Proposal prior to the award of the ALSF Contract.

21 d. On or about June 12, 2002, Olson falsely told the FAA contracting officer
22 not to award the ALSF contract to DBM because there were outstanding "real estate issues"
23 which needed to be resolved before the ALSF Contract could be awarded.

24 e. At least by June 12, 2002, ROBERT FERRELL and Olson decided to
25 remove the FAA contracting officer from the ALSF contract in order to prevent her from
26 awarding the ALSF Contract to DBM.

27 f. At least by June 12, 2002, ROBERT FERRELL and Olson decided to
28 replace the original FAA contracting officer with the defendant ROBERT FERRELL who

1 would ensure that the ALSF Contract would be awarded to PCL.

2 g. On or about June 12, 2002, the defendant ROBERT FERRELL told the
3 FAA contracting officer that the contracting officer was being removed from the ALSF
4 Contract and that ROBERT FERRELL would be the new contracting officer on the ALSF
5 Contract.

6 h. On or about June 12, 2002, ROBERT FERRELL contacted PCL and advised
7 that PCL was not the low bidder on the ALSF Contract and that PCL needed to lower its price
8 proposal by \$55,000 in order to be awarded the ALSF Contract.

9 i. On or about June 12, 2002, Olson contacted PCL and advised PCL of the
10 price differential between the DBM and PCL price proposals.

11 j. On or about June 12, 2002, PCL submitted a revised price proposal which
12 reduced PCL's price proposal by \$55,000 and falsely claimed that the price reduction was
13 based upon "the late receipt of a subcontractor bid."

14 k. On or about June 12, 2002, ROBERT FERRELL sought legal advice from an
15 FAA attorney to determine whether the FAA could accept PCL's revised price proposal. In
16 seeking this advice ROBERT FERRELL concealed from the FAA attorney, the fact that
17 ROBERT FERRELL had induced PCL to submit this revised price proposal by telling PCL
18 that PCL was not the low bidder and needed to reduce its price by \$55,000.

19 l. On or about August 14, 2002, Olson wrote a letter to DBM falsely stating
20 that she had "found no evidence to support [DBM's] allegation that actions were taken to
21 prevent DBM from successfully bidding on this solicitation and from successfully protesting a
22 wrongful award to PCL."

23 m. Counts 2 through 7 of this Indictment are hereby incorporated by reference
24 herein and alleged as overt acts as if fully set forth herein.

25 All in violation of Title 18, United States Code, Section 371.

26 **COUNT 2**
27 **(PROCUREMENT FRAUD)**

28 1. The Grand Jury realleges and incorporates by reference the allegations contained in
paragraphs 1 through 20 of Count 1 of this Indictment.

1 2. On or about June 12, 2002, in the Western District of Washington, ROBERT
2 FERRELL, an official of the United States, while assisting with the award of a Federal agency
3 procurement contract, and before that award was made, knowingly disclosed to PCL source
4 selection information for the purpose of giving PCL a competitive advantage in the award of a
5 Federal agency procurement contract, namely, that PCL was not the low bidder on the ALSF
6 Contract.

7 All in violation of Title 41, United States Code, Sections 423(a), 423(e), as applied to
8 the FAA by Title 49, United States Code, Section 40110(d)(3).

9 COUNT 3
10 (PROCUREMENT FRAUD)

11 1. The Grand Jury realleges and incorporates by reference the allegations contained in
12 paragraphs 1 through 20 of Count 1 of this Indictment.

13 2. On or about June 12, 2002, in the Western District of Washington, ROBERT
14 FERRELL, an official of the United States, while assisting with the award of a Federal agency
15 procurement contract, and before that award was made, knowingly disclosed to PCL source
16 selection information for the purpose of giving PCL a competitive advantage in the award of a
17 Federal agency procurement contract, namely, that PCL needed to lower its price by \$55,000
18 in order to be awarded the ALSF Contract.

19 All in violation of Title 41, United States Code, Sections 423(a), 423(e), as applied to
20 the FAA by Title 49, United States Code, Section 40110(d)(3).

21 COUNT 4
22 (PROCUREMENT FRAUD)

23 1. The Grand Jury realleges and incorporates by reference the allegations contained in
24 paragraphs 1 through 20 of Count 1 of this Indictment.

25 2. On or about June 12, 2002, in the Western District of Washington, ROBERT
26 FERRELL aided and abetted Vicki Lynn Olson, an official of the United States, while
27 assisting with the award of a Federal agency procurement contract, and before that award was
28 made, knowingly disclosed to PCL source selection information for the purpose of giving PCL
a competitive advantage in the award of a federal agency procurement contract, namely, the

1 price differential between the price proposal submitted by PCL and DBM.

2 All in violation of Title 41, United States Code, Sections 423(a), 423(e), as applied to
3 the FAA by Title 49, United States Code, Section 40110(d)(3), and Title 18, United States
4 Code, Section 2.

5 COUNT 5
6 (FALSE DOCUMENT)

7 1. The Grand Jury realleges and incorporates by reference the allegations contained in
8 paragraphs 1 through 20 of Count 1 of this Indictment.

9 2. On or about June 12, 2002, in the Western District of Washington, in a matter
10 within the jurisdiction of the Federal Aviation Administration, an agency of the United States,
11 ROBERT FERRELL, did knowingly and willfully make a false writing and document
12 containing materially false, fictitious, and fraudulent statements, that is: ROBERT FERRELL
13 prepared a written FAA Form 1360-33 stating that on June 12, 2002, he had received a
14 telephone call from PCL employees inquiring whether PCL could submit a revised price
15 proposal on the ALSF Contract based on PCL's receipt of a late quote from one of its
16 subcontractors, when, in truth and in fact, as ROBERT FERRELL then well knew, ROBERT
17 FERRELL had called PCL and told PCL that PCL was not the low bidder on the ALSF
18 Contract and that PCL needed to lower its bid by \$55,000 in order to be awarded the ALSF
19 Contract.

20 All in violation of Title 18, United States Code, Section 1001.

21 COUNT 6
(CONCEALMENT OF MATERIAL FACTS)

22 1. The Grand Jury realleges and incorporates by reference the allegations contained in
23 paragraphs 1 through 20 of this Indictment.

24 2. On or about June 13, 2002, in the Western District of Washington, in a matter
25 within the jurisdiction of the Federal Aviation Administration, an agency of the United States,
26 ROBERT FERRELL, did knowingly and willfully falsify, conceal, and cover up a material
27 fact by trick, scheme and device, that is: ROBERT FERRELL told an FAA attorney that he
28 had received a revised price proposal from PCL on the ALSF Contract and was requesting

1 legal advice as to whether the FAA could accept the late price proposal, when, in truth and in
2 fact, as ROBERT FERRELL well knew ROBERT FERRELL willfully concealed from the
3 FAA attorney the material facts that ROBERT FERRELL had called PCL and told PCL that it
4 was not the low bidder on the ALSF Contract and that PCL needed to lower its bid by
5 \$55,000 in order to be awarded the ALSF Contract. The defendant also concealed from the
6 FAA attorney the material fact that Vicki Lynn Olson had told PCL the price differential
7 between PCL and DBM's bids.

8 All in violation of Title 18, United States Code, Section 1001.

9 **COUNT 7**
10 **(FALSE STATEMENT)**

11 1. The Grand Jury realleges and incorporates by reference the allegations contained in
12 paragraphs 1 through 20 of Count 1 this Indictment.

13 2. On or about June 14, 2002, in the Western District of Washington, in a matter
14 within the jurisdiction of the Federal Aviation Administration, an agency of the United States,
15 ROBERT FERRELL, did knowingly and willfully make a false, fraudulent, and fictitious
16 material statement and representation, that is: ROBERT FERRELL told an FAA attorney that
17 he had received a late price proposal from PCL on the ALSF Contract which was based on the
18 fact that PCL had received a late subcontractor bid, when, in truth and in fact, as ROBERT
19 FERRELL well knew, PCL's late price proposal was not the result of a late bid from a
20 subcontractor but the result of the fact that ROBERT FERRELL had called PCL and told PCL
21 that PCL was not the low bidder on the ALSF Contract and that PCL needed to lower its bid

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23 ///

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1 by \$55,000 in order to be awarded the ALSF Contract.

2 All in violation of Title 18, United States Code, Section 1001.

3 DATED this 1 day of March, 2007.

4 A TRUE BILL

5 DATED:

6 *March 1, 2007*

7 [SIGNATURE REDACTED]
8 FOREPERSON

9 *Jeffrey C. Sullivan*

10 JEFFREY C. SULLIVAN
11 UNITED STATES ATTORNEY

12 *Carl Blackstone*

13 CARL BLACKSTONE
14 ASSISTANT UNITED STATES ATTORNEY